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STATE OF TEXAS
Plaintiff

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IN THE DISTRICT COURT OF

v.

HARRIS COUNTY, TEXAS

PATRICK O’CONNOR &
ASSOCIATES, L.P. D/B/A
O’CONNOR & ASSOCIATES
Defendant

____ **JUDICIAL DISTRICT**

**PLAINTIFF’S ORIGINAL PETITION AND APPLICATION
FOR TEMPORARY RESTRAINING ORDER AND
FOR TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE DISTRICT JUDGE:

COMES NOW, Plaintiff, the State of Texas, acting by and through its Attorney General, GREG ABBOTT, on behalf of the interest of the general public and complains of Defendant PATRICK O’CONNOR & ASSOCIATES, L.P., a Texas limited partnership doing business as O’CONNOR & ASSOCIATES (“O’Connor” or “Defendant”). Plaintiff alleges that Defendant engaged in unlawful and deceptive acts and practices in violation of the Texas Deceptive Trade Practices Act. In support thereof, Plaintiff respectfully shows the following:

DISCOVERY

1.1 Discovery shall be conducted under a LEVEL 2 discovery control plan pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

JURISDICTION

2.1 This action is brought by Attorney General Greg Abbott (hereinafter the “Attorney General”), through his Consumer Protection and Public Health Division in the name of the STATE OF TEXAS, and in the public interest under the authority granted to him pursuant

to §17.47 of the Texas Deceptive Trade Practices Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.*, (hereinafter the “DTPA”), upon the grounds that Defendant has engaged in false, misleading and deceptive acts and practices in the conduct of trade or commerce as defined in, and declared unlawful by, §17.46 (a) and (b) of the DTPA.

2.2 Plaintiff seeks to enjoin Defendant from further violations of the provisions of the DTPA, pursuant to DTPA §17.47(a).

2.3 Plaintiff seeks civil penalties up to \$20,000 for each act or practice calculated to acquire or deprive money or other property from a consumer in violation of the DTPA, pursuant to DTPA §17.47(c)(1). In addition, Plaintiff seeks civil penalties up to \$250,000 for each act or practice calculated to acquire or deprive money or other property from a consumer aged 65 years or older when the act or practice occurred, pursuant to section 17.47(c)(2).

2.4 Plaintiff seeks reasonable attorney’s fees and court costs for prosecuting this action, as authorized by Texas Government Code §402.006(c).

DEFENDANT

3.1 PATRICK O’CONNOR & ASSOCIATES, L.P. D/B/A O’CONNOR & ASSOCIATES is a Texas limited partnership doing business as O’Connor & Associates, who may be served with process by serving its registered agent for service of process, Patrick O’Connor at 2000 N. Loop West, Suite 200, Houston, Texas 77018.

VENUE

4.1 Venue of this suit lies in Harris County, Texas, for the following reasons:

A. Venue is proper in Harris County, Texas, pursuant to §15.002 (a)(1) of the TEX. CIV. PRAC. & REM. CODE, because Harris County is the county in which all or a substantial part of the

events or omissions giving rise to the claim occurred. TEX. CIV. PRAC. & REM. CODE §15.002(a)(1).

B. Venue is also proper in Harris County, Texas under TEX. CIV. PRAC. & REM. CODE ANN. 15.002(a)(3) because the Defendant's principal office is located in Houston, Harris County, Texas.

C. Venue is also proper under DTPA §17.56 because Defendants do business in Harris County, Texas, and the transactions that form the basis of this cause of action occurred in Harris County, Texas.

PUBLIC INTEREST

5.1 Plaintiff State of Texas has reason to believe that Defendant has engaged in, and will continue to engage in the unlawful practices set forth below. Plaintiff State of Texas has reason to believe Defendant has caused and will cause immediate, irreparable injury, loss and damage to the State of Texas and its citizens, and will also cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. Therefore, the Consumer Protection Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

6.1 Defendant has, at all times described below, engaged in conduct constituting "trade and commerce", as those terms are defined in section 17.45(6) of the DTPA.

ACTS OF AGENTS

7.1 Defendant O'Connor is a large property tax consulting agency, operating in and around Harris County. Defendant employs and supervises many tax consultants to represent property owners statewide before appraisal districts in various Texas counties.

7.2 Whenever in this petition it is alleged that a Defendant did any act, it is meant that:

- A. The Defendant performed or participated in the act, or
- B. The Defendant's officers, agents, trustees or employees performed or participated in the act on behalf of and under the authority of the Defendant.

PRE-SUIT NOTICE

8.1 Defendant was notified by Plaintiff prior to the filing of this suit regarding the general nature of the DTPA violations that are the subject matter of this suit. (Ex. DD) Defendant was also notified of the hearing on Plaintiff's application for temporary restraining order. (Ex. FF)

FACTUAL BACKGROUND

The Texas Property Tax System.

- 9.1 The property tax system in Texas is comprised of four main parts:
- a. An appraisal district in each county annually determines the appraised value of taxable property located within its boundaries. The chief appraiser is the appraisal district's chief administrator and is responsible to a board of directors for its operation.
 - b. An appraisal review board settles any disagreements between property owners and the appraisal district about the taxable value of the property. The board of directors selects and appoints the appraisal review board as an independent panel of citizens to decide the outcome of taxpayer protests.
 - c. The local taxing units, including the county, cities, school districts, and special districts, approve the tax rate they need to meet their respective annual budgets. The tax rate is based on the amount of taxable property located within its boundaries.

9.2 The fourth part is the collection of the taxes.

9.3 Property taxes are the single largest source of tax dollars (apart from government fees and sales taxes) for local governments in Texas and help to pay for public schools, city streets, county roads, police and fire protection and other public services.

9.4 January 1 is the beginning of the property tax appraisal process. Between January 1 and April 30, the appraisal districts attempt to determine (i) the appraised value of tangible property within its boundaries, (ii) whether the appraised value changed from the preceding year and (iii) whether the property is still located within its boundaries. The district further processes applications for tax exemptions and other tax relief. On or before April 30th, the appraisal district sends notices to property owners if their appraised value has been changed. Property owners then have an opportunity to file a protest with the appraisal review board. Around May 15, the appraisal review board begins hearing protests from property owners who believe their property values are incorrect or who feel they were improperly denied an exemption. When the appraisal review boards have completed their work, they issue a final certified appraisal roll. The chief appraiser then gives each taxing unit that portion of the certified appraisal roll that includes taxable property within their boundaries.

9.5 Usually in September or October, the elected officials of each taxing unit adopt the tax rates for their unit (*e.g.*, county, city, school district etc.).

9.6 Usually in October and November, tax bills are sent out. Taxpayers have until January 31 of the following year to pay their taxes. On February 1, penalty and interest charges begin accumulating on most unpaid tax bills. Taxing units may start legal action to collect unpaid property taxes. To enforce collection, taxing units have a statutory lien on any tangible property that they can tax.

Property Tax Protests May Be Handled By The Property Owner Or Properly Authorized Tax Agent.

9.7 Taxpayers are entitled to protest the taxable values of their property as assessed by the appraisal district. If a property owner believes that his or her property has been appraised for more than its January 1 market value, he or she may file a protest with the appraisal district. The deadline for filing a tax protest is May 31. If the taxpayer does not agree with the appraisal review board's decision, then he or she can file a lawsuit in state district court against the appraisal district.

9.8 A property owner may represent himself or herself in a property tax protest with the appraisal district. The property owner may, but is not required to, appoint an "agent" to represent his or her interests in the protest process. Tex. Prop. Tax Code §1.111.

9.9 If the property owner appoints an agent, the appraisal district must have on file a form entitled "Appointment of Agent" at or before the hearing on the taxpayer's protest. Tex. Prop. Tax Code §1.111(i).¹ This form is promulgated by the State Comptroller's Office. (Attorneys and employees of the taxpayer are not required to file an Appointment of Agent form.) A copy of the current form is attached as Exhibit V.

9.10 The taxing agent (with some limited exceptions) must be licensed by the Texas Department of Licensing & Regulation to represent taxpayers.

9.11 The taxing agent may represent the taxpayer for general property tax purposes or for specific acts, such as to file notices of protest, or to present the taxpayer's case before the appraisal review board, or to receive notices of tax bills.

Taxpayer Complaints Regarding Defendant O'Connor

¹ Section 1.111(i) states: "An appraisal review board shall accept and consider a motion or protest filed by an agent of a property owner if an agency authorization is filed at or before the hearing on the motion or protest." House Bill No. 1203, which is currently pending, would allow the appraisal review board to designate the time and place for filing the agency authorization before the hearing.

9.12 Defendant O'Connor advertises that it provides services as a licensed property tax agent. O'Connor is headquartered in Houston, Texas. O'Connor represents that it provides consulting services for property taxpayers throughout Texas, including Harris County.

9.13 O'Connor claims that it is the largest property tax consultant in Texas, that in 2008 it filed more than 140,000 protests, and that it reduced client assessed values by \$2.6 billion and cut their taxes by more than \$85 million. O'Connor represents that it has a staff of over 125 employees. (See Ex. J, www.poconnor.com)

9.14 Consumers have filed many complaints regarding O'Connor with the Better Business Bureau with the result that O'Connor has an "unsatisfactory" rating with the BBB. (Ex. A, Turner Aff.) Many taxpayers also complain to the appraisal districts regarding O'Connor. (Affidavit of Jamie Huble, Technical Assistant Supervisor III for Harris County Appraisal District, Ex. B (B-1 – B-23); Brown Aff. (Tarrant County), Ex. EE) Many of these complaints describe unethical business practices and misrepresentations by O'Connor.

Representation of Taxpayers Before The Appraisal District Without The Taxpayers' Knowledge Or Approval.

9.15 Taxpayers complain that O'Connor has filed tax protests on their behalf without their knowledge or consent and then O'Connor's bills them for 50% of the alleged tax savings. (Ex. C, Barr Aff.; Ex. A-20 – Ex. A-37 (Turner Aff.); Ex. B, Huble Aff. B-1, B-2, B-3, B-5, B-7, B-9, B-12, B-13, B-14) If the taxpayers do not pay for the unauthorized service, O'Connor sues them in small claims court. (Ex. A-25; Ex. Y)

9.16 As noted, to protest an appraised value, the taxpayer, or his authorized agent, must file a protest with the appraisal district. (Ex. W (form of protest)). For a tax agent to handle the protest and appear before the appraisal review board, there must be an "Appointment of

Agent” form filed with the appraisal district. (Form of Appointment of Agent.) This form must be filed at or before the hearing on the motion or protest before the appraisal review board. Tex. Prop. Tax Code §1.111.

9.17 In 2008, O’Connor filed over 90,000 property tax protests with the Harris County Appraisal District. (Stiefer Aff., Ex. Z ¶3) Of these 2008 protests filed by O’Connor, in approximately 24,000 cases or over 25% of the time, O’Connor filed the protest without authorization and Appointment of Agent form from the taxpayer. (Stiefer Aff., Ex Z ¶4) By the time of the tax protest hearings, O’Connor still lacked and failed to obtain authorization from the property owners in more than 11,700 cases, or for approximately 12% of the protests it filed. (Stiefer Aff., Ex. Z ¶4)

9.18 Many taxpayers complain that they never authorized O’Connor to file a protest on their behalf. For example,

- Taxpayers complain that they “never contacted” O’Connor, have “never heard of” O’Connor, and never authorized O’Connor to protest their property values. (Barr Aff., Ex. C; Ex. A-20; A-21; A-22; A-23; A-24 – A-37; Huble Aff. Ex. B-1, B-2, B-3, B-5, B-7, B-9, B-12, B-13, B-14)
- Taxpayers complain that after receiving a flyer from O’Connor and contacting O’Connor for more information, they decided not to hire O’Connor and advised O’Connor that they did not wish to receive any services; nevertheless, O’Connor ignored them, filed an unauthorized protest on their behalf, and then sent the taxpayers an invoice for allege tax agent services. (Ex. A-21; A-25; A-27; A-28; A-31; A-35; Ex. C)

- Taxpayers complain that they have notified O’Connor that they did not wish to use their services; nevertheless, O’Connor ignored the notice and demanded payment from the taxpayer for alleged tax savings. (Ex. A-26; A-35; A-36)
- For example, one taxpayer wrote:

I received several emails [from O’Connor] and responded to them all saying I do not want you to represent me. I was told I would be removed from their database and thought that had happened. I was stunned to find that these people actually went to the Appraisal Review Board, representing me, when I received a notice from the Appraisal Review Board saying my protest had been denied.

I did not want their services. I plainly stated that and they responded they would not represent me and they did anyway.

(Ex. A-24)

- Taxpayers complain that O’Connor fails to advise consumers that their contracts are “evergreen” and that O’Connor will continue to file protests on their behalf year after year until they cancel in writing (Ex. A-29; A-25; A-22; A-32; Ex. F)

9.19 According to consumers, O’Connor has prepared and filed fictitious Appointment of Agent forms, falsely claiming to have obtained “verbal” authorizations from them to file a property tax protest on their behalf. Taxpayers deny that they gave “verbal” authorization, and in many cases, taxpayers complain that they specifically instructed O’Connor not to represent them. (Ex. B, Huble Aff.; Ex. C; Ex. A-20; A-21; A-24; A-34; A-35; A-36) According to records from the Harris County Appraisal District, O’Connor routinely files a form “verification” of a supposed “verbal” authorization from the taxpayer. (Huble Aff., Ex. B ¶6; *see e.g.* Ex. B-1) These form verifications of “verbal” authorization do not identify the property owner but simply state that the person signing the “verification” spoke with “the property owner’s representative” and “that person” (who is unnamed) authorized O’Connor to sign the appointment to designate

O'Connor as tax agent. (*see e.g.* Huble Aff., Ex. B-1) There is no indication of the name of the “property owner’s representative” or by what authority this unidentified “representative” is acting for the property owner. *Id.* This form verification is attached by O'Connor to the form of Appointment of Agent with a stamped signature of “Pat O'Connor” with the word “agent” printed below. (*e.g.* Ex. B-1) The signature of the property owner is not found on either document. This form of verification is attached to the Appointment of Agent form and filed with the appraisal district by O'Connor. Taxpayers complain that they never authorized O'Connor to represent them and the filings by O'Connor with the appraisal district on their behalf are falsified. (Ex. A-20 – A-37; B-1 – B-14) As a result of O'Connor’s unauthorized filings, appraisal district notices—of appraised value, tax protest hearings, and review board decisions—are sent to O'Connor as the purported tax agent and not to the property owner even though there is no recorded authorization by the property owner. (Ex. B Huble Aff. ¶8)

9.20 O'Connor has also filed fraudulent jurats with the appointment of agent forms. A number of verifications indicate that the notary and the signatory are one and the same person – Cecil Jackson – an O'Connor management level employee. (Huble Aff. B-17 – B-23) Texas law prohibits a notary from notarizing his or her own signature. TEX. GOV'T Code §406.008(b) (*See* <http://www.sos.state.tx.us/statdoc/index.shtml> (“You should not notarize your own signature.”))

9.21 In addition to falsified verbal authorizations, the expiration dates on a number of O'Connor Appointment of Agent forms filed with the appraisal district appear to have been altered to extend the original expiration date. Absent the property owners’ actual and informed consent, these forms are also fraudulent. (Huble Aff., Ex. B; *e.g.* Ex. B-15, B-16)

9.22 As a result of O'Connor's unauthorized conduct, taxpayers are often unaware that a protest has been filed by O'Connor on their behalf. (Ex. B Huble Aff. ¶ 8) As noted, if the taxpayer does not pay O'Connor for the unauthorized services, O'Connor then sues the taxpayer for payment. (See e.g. Ex. Y)

9.23 Also, as a result of the unauthorized protest, unknown to the taxpayer, often there is a delay in finalizing the appraised value of the property. The property owner, not knowing that a protest has been filed by O'Connor on his or her behalf, often does not receive timely notice of the property taxes that are owed within the tax year. Taxpayers who wish to pay their property taxes for the taxable year before the year end are unable to do so because they are unaware a protest has been filed on their behalf, which caused a delay in receiving their tax bill.

9.24 Also as a result of the unauthorized tax protests, homeowners who are in the process of selling their homes are delayed because they cannot sell until the appraised value is certified and the taxes paid.

O'Connor Routinely Fails To Appear At Tax Protest Hearings Causing Consumers To Lose Valuable Rights to Appeal.

9.25 In marketing its services, O'Connor represents that it will attend the appraisal review board hearing on behalf of the taxpayer and that there is no need for the taxpayer to attend. (See Ex. J, p.2 www.poconnor.com at p. 2) (See also Ex. H (mailout)) According to O'Connor, this is one of the benefits of its service. Notwithstanding this assurance, however, taxpayers (who have engaged O'Connor) complain O'Connor routinely fails to appear at tax protest hearings before the appraisal review board. (Ex. A-1 – A-19) (Ex. Y) Indeed, records of the Harris County Appraisal District indicate after filing a protest on behalf of a taxpayer, O'Connor failed to appear or present any evidence at the hearing in approximately 9000 cases in 2008. (Ex. Z, Stiefer Aff.) Taxpayers complain that after authorizing O'Connor to represent

their interests before the appraisal district, O'Connor failed to appear to at the hearing on their protest before the appraisal review board. (Id.) Taxpayers complain they receive no explanation from O'Connor for O'Connor's nonappearance. Taxpayers complain generally that after engaging O'Connor they receive no communication from the company and their phone calls are not returned. (Ex. E, Chandler Aff.; Ex. G, Oakes Aff.; Ex. A-38 – A-45) As a result of O'Connor's routine failure to appear for protest hearings, and keep taxpayers informed, taxpayers lose valuable rights to lower their property taxes, like (i) the right to appeal to district court; (ii) to receive notice of hearing (see Tex. Prop. Tax Code §41.411); and (iii) the ability to file a correction motion (see Tex. Prop. Tax Code § 25.25). O'Connor promises "when you hire O'Connor & Associates there is no financial risk" but does not inform the consumer that when O'Connor does not appear at the appraisal review board hearing or present evidence—as it failed to do in over 9000 cases in 2008—there can be serious financial consequences for the taxpayer.

Misleading and Deceptive Advertising Practices of O'Connor

9.26 O'Connor materially misrepresents the services it provides to consumers and the results it has achieved for taxpayers.

9.27 O'Connor's website and mailings make various overstated, unsubstantiated and misleading claims regarding its "success rate" on behalf of taxpayers. In its mass mailings to consumers, O'Connor promises that it "will win at the appraisal district" implying that O'Connor can guarantee a tax reduction 100% of the time—which is seriously misleading since the appraisal districts set the appraised property values and the taxing entities set the tax rates. (Ex. I) (emphasis added) O'Connor also claims a "95% success rate for repeat clients." (Ex. I) In fact, in the over 90,000 tax protests filed by O'Connor in Harris County in 2008, according to appraisal district records, only approximately 71% resulted in a decrease in appraised value at

the appraisal district level. (Ex. AA Garcia Aff.) Moreover, O'Connor's website declares that it has pending over 3200 judicial appeals, which on its face confirms O'Connor does not always "win" at the appraisal district. (Ex. K).

Also in its mass mailings, O'Connor typically provides a list of "comparable" values in the taxpayer's area. (*See e.g.* Ex. D) The mailing is misleading because the "comparables" are based on the previous year's appraised values. O'Connor also chooses "comparables" that often are significantly lower than the subject property. O'Connor's intent is clear—to mislead consumers into believing that they will obtain greater tax savings by engaging O'Connor rather than one of its competitors or on their own. Taxpayers complain they would have been better off handling their own protest. (Ex. D, Betts Aff.)

9.28 O'Connor also misleads consumers with respect to the services it provides for "judicial appeals" of tax protests in the district courts on behalf of taxpayers. According to O'Connor, it "coordinates" over 3200 lawsuits on behalf of taxpayers against the appraisal districts throughout Texas for a 50% contingency fee of any tax savings to the taxpayer. (See Ex. K, www.pocconnor.com, p. 1) O'Connor promises to "engage outside council [sic]" to file a lawsuit on your behalf, engage expert witness services for research and analysis; then we'll coordinate and facilitate the entire litigation process for you." (Ex. K) O'Connor further claims that it is "successful 80-90%" of the time in judicial appeals. (Ex. K) Although O'Connor does not specify "success," appraisal district records reflect the McKenney firm non-suits more than 20% of judicial appeals, with the taxpayer receiving no relief, making this representation untrue.

9.29 A single 4-attorney law firm, McKenney & Associates, files almost all judicial appeals for O'Connor clients. (Ex. BB O'Connor Dep. pp. 35-43) (*See also* Ex. L) Patrick O'Connor's brother-in-law, Hugh McKenney, is the sole shareholder of the firm. (Ex. CC

McKenney Dep. pp. 122-123; Ex. L) There is no agreement between the McKenney firm and the taxpayers (with limited exceptions). (Ex. CC McKenney Dep. p. 111) The McKenney firm is generally paid a flat monthly fee directly by O'Connor (Ex. BB O'Connor Dep. pp.35-43), and O'Connor is virtually the sole client of the firm, representing 75% of the McKenney firm's business. (Ex. CC McKenney Dep. P. 87-89, 134) Although the McKenney firm files the lawsuit on behalf of the taxpayer and in the name of the taxpayer, the law firm has no agreement or direct contact with the taxpayer. (Ex. BB O'Connor Dep. pp. 64-72) O'Connor fails to disclose this obvious conflict of interest to consumers.

9.30 Typically, the taxpayer is not notified of the attorney's name or contact information or even provided with basic information about their case. (See *e.g.*, Ex. N, Freeman Aff.) O'Connor claims it has "blanket" authority from the taxpayer clients to file and settle judicial appeals (Ex. BB O'Connor Dep. pp. 56-64) and on this basis O'Connor settles taxpayer lawsuits without taxpayer input or approval. (See *e.g.* Ex. O, Valley Aff.)

9.31 O'Connor's failure to disclose material facts regarding the legal services it provides for judicial appeals is grossly misleading.

9.32 Defendant's website also misstates the law: "Homeowners must annually protest their property taxes to preserve their right to a 10% maximum increase in their assessed value." (Ex. M). This is a misstatement of the law. There is no need to file annually to maintain the 10% cap on a Texas homestead.

9.33 Additionally, O'Connor attempts to mislead consumers into believing that it is endorsed by the various appraisal districts by creating multiple websites with domain names such as: www.harris-countyappraisaldistrict.com www.dallascentral-appraisaldistrict.com;
www.fortbendcentral-appraisaldistrict.com, www.galveston-countyappraisaldistrict.com,

www.traviscentral-appraisaldistrict.com and www.montgomerycentralappraisaldistrict.com. (See Exhibits P – U). Additionally, an internet search of a county appraisal district brings up an O’Connor sponsored website that implies sponsorship of O’Connor by the appraisal district. (Ex. X)

9.34 The domain names and websites lead the consumer to a website that appears to be sponsored by the appraisal district. For example, O’Connor’s website at www.harris-countyappraisaldistrict.com website gives the false impression that it is a website sponsored by the Harris County Appraisal District. The top of the page contains the Harris County Appraisal District address and hours of operations, and the links on the page refer to “Harris County Operations Data” and Harris County Helpful Budgets and Manuals.” The website then gives a general description of the functions of the appraisal district and states directly following this discussion: “Hire O’Connor to Protest Your Harris County property taxes”—falsely implying that the appraisal district endorses or recommends O’Connor. The website also has a link to O’Connor’s main webpage at www.poconnor.com. Although the website also contains a disclaimer that “this is not the official Harris County Appraisal district website”, the impact is at best confusing, and the intent is certainly clear—to mislead the consumer.

9.35 In addition to the above actions, O’Connor also has “subpages” that are part and parcel of his own website: www.poconnor.com. There is a subpage for each of the major appraisal districts in Texas:

www.poconnor.com/harris_county_appraisal_district.asp,

www.poconnor.com/elpaso_county_appraisal_district.asp,

www.poconnor.com/dallas_county_appraisal_district.asp

www.poconnor.com/montgomery_county_appraisal_district.asp

www.poconnor.com/galveston_county_appraisal_district.asp

www.poconnor.com/travis_central_appraisal_district.asp

www.poconnor.com/fortbend_central_appraisal_district.asp

In each subpage, there is a link titled: “Hire O’Connor”. Again, the evident intent is to mislead the consumer into concluding that O’Connor is sponsored or approved by the appraisal district.

VIOLATIONS OF THE DTPA

10.1 Defendant, in the course and conduct of trade and commerce, has directly and indirectly engaged in false, misleading and deceptive acts and practices declared to be unlawful by the DTPA §17.46(a). Without limiting the foregoing, Defendant also has violated DTPA §17.46(b), by engaging in the following conduct:

- a) Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of DTPA, §17.46(b)(2);
- b) Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of DTPA, §17.46(b)(3);
- c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have, in violation of DTPA, §17.46(b)(5);
- d) Advertising goods or services with intent not to sell them as advertised in violation of DTPA, §17.46(b)(9);

- e) Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of DTPA, §17.46(b)(24).

TRIAL BY JURY

11.1 Plaintiff herein requests a jury trial and tenders the jury fee to the Harris County District Clerk's office pursuant to TEX. R. CIV. P. 216 and TEX. GOVT. CODE ANN. §51.604.

**APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY
INJUNCTION AND PERMANENT INJUNCTION**

12.1. Because Defendant has engaged in the unlawful acts and practices described above, Defendants has violated and will continue to violate the law as alleged in this Petition. Unless immediately restrained by this Honorable Court, Defendant will continue to violate the laws of the STATE OF TEXAS and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public. Therefore, Plaintiff requests a Temporary Restraining Order, Temporary Injunction and Permanent Injunction as indicated below. Tex. Bus. & Comm. Code §17.47. Pursuant to DTPA §17.47(b), the Court may issue temporary restraining orders and temporary and permanent injunctions to prevent continuing violations of the DTPA. The court shall issue such injunctive relief without requiring a bond. DTPA §17.47(b).

12.2 Plaintiff requests leave of this Court to conduct telephonic, oral, written and other depositions (containing requests for production) of witnesses prior to any scheduled Temporary Injunction hearing. There are a number of consumers and other witnesses that may need to be deposed prior to any scheduled temporary injunction hearing. Any depositions, telephonic or

otherwise, would be conducted with reasonable, shortened notice to Defendant and its attorneys, if known.

PRAYER

13.1 WHEREFORE, Plaintiff prays that Defendant be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendant, Defendant's successors, assigns, officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendant from engaging in the following acts or practices:

A. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, or other written or computer generated materials relating to the business of Defendant currently or hereafter in Defendant's possession, custody or control except in response to further orders or subpoenas in this cause;

B. Filing a tax protest with the appraisal district without the consumer's prior consent or authorization;

C. Falsifying Appointment of Agent forms and filing falsified Appointment of Agent forms and affidavits on behalf of consumers with the appraisal districts;

D. Filing "verbal authorization" affidavits with the appraisal districts unless Defendant in fact obtained prior authorization from the consumer;

E. Altering Appointment of Agent forms and filing them with the appraisal district without the consumer's written consent;

F. Failing to attend tax protest hearings or submit evidence to the appraisal district on behalf of consumers for whom O'Connor has filed a tax protest;

G. Failing to disclose that for judicial appeals consumers will have no contact with their legal counsel and will not be consulted with respect to the status of their appeal or settlement of their case;

H. Representing, selling, marketing, promoting, distributing or advertising to consumers, expressly or by implication,

1. that Defendant guarantees property tax savings for consumers;
2. that Defendant is sponsored by, approved by, affiliated with, connected or associated with any of the appraisal districts;
3. that Defendant has a success rate in obtaining tax savings for consumers that it does not have;
4. that Defendant has a success rate in judicial appeals for consumers that it does not have;
5. that Defendant will give the consumer a gift certificate if no tax savings are obtained unless Defendant in fact provides the gift certificate;
6. any statements of law or fact that are erroneous.

13.2. The State shall not be required to post a bond.

13.3 The State shall be permitted to conduct discovery prior to the temporary injunction hearing upon shortened but reasonable notice to Defendant.

13.4 In addition, Plaintiff STATE OF TEXAS respectfully prays that this Court will:

A. Adjudge against Defendant civil penalties in favor of Plaintiff, STATE OF TEXAS, in an amount up to \$20,000 per violation as allowed by law pursuant to the DTPA TEX. BUS. & COM. CODE §17.47(c)(1);

B. Adjudge against Defendant civil penalties in favor of Plaintiff STATE OF TEXAS in an amount up to \$250,000 as allowed by law under the DTPA, TEX. BUS. & COM. CODE §17.47(c)(2), due to Defendants committing acts and practices that were calculated to acquire or deprive money or other property from consumers who were 65 years of age or older when the act or practice occurred;

C. Order Defendant to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or, in the alternative, award judgment for damages in an amount within the jurisdictional limits of this court to compensate for such losses;

D. Order Defendant to pay Plaintiff STATE OF TEXAS attorney fees and costs of court pursuant to TEX. GOVT. CODE §402.006(c);

E. Order the disgorgement of all sums taken from consumers by means of Deceptive Trade Practices, together with all proceeds, interest, income, profits and accessions thereto;

F. Pre-judgment and post-judgment interest on all awards of restitution, damages, or civil penalties, as provided by law;

13.3. Plaintiff prays for all further relief, at law or inequity, to which it is justly entitled.

Respectfully submitted,

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